

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WP(C).No. 11481 of 2007(R)

PETITIONER:

ADVOCATE AND ENGINEER,
LT.COL.N.D.JOY (RETD), B.SC.(ENGG.CIVIL),
MIE, FICA, LL.B NEELAMKAVIL BHAVAN, 28/3227,
1ST CROSS CHERUPARAMBATH ROAD, KADAVANTHRA,
COCHIN-20.

BY PARTY IN PERSON
AND ADV. SMT.RANI JOY

RESPONDENTS:

1. THE HIGH COURT OF KERALA, REPRESENTED
BY REGISTRAR, HIGH COURT OF KERALA,
ERNAKULAM.
2. MR.R.BHASKARAN, RETD. JUDGE,
"KRISHNA KRIPA", KALOOR, ELAMKULAM ROAD,
KOCHI-17.
3. MR.B.M.THULASIDAS, RETD.JUDGE,
'ROHINI', TEMPLE LANE (SOUTH), RAVIPURAM,
KOCHI-682 015.
4. R.MURALEEDHARAN, S/O.LATE
SRI.RAMAKRISHNA PILLAI, MANAGING PARTNER,
VEMBANADU CONSTRUCTIONS, THALICODU P.O.,
PUNALUR, KOLLAM DISTRICT.
5. THE NATIONAL THERMAL POWER CORPORATION
LTD., N.T.P.C. BHAVAN CORE-7, SCOPE COMPLEX,
LODI ROAD, NEW DELHI-110 003, REPRESENTED
BY ITS CHAIRMAN & MANAGING DIRECTOR.

6. THE DEPUTY MANAGER (GS),
THE NATIONAL THERMAL POWER CORPORATION
LTD., (NTPC), CHOOLATHERUVU, KAYAMKULAM.
7. HYDRO-TECH, ENGINEER CONTRACTORS,
PTC TOWER, S.S.COIL ROAD, THAMPANOOR,
TRIVANDRUM-695 001.
8. THE KERALA WATER AUTHORITY,
JALA BHAVAN, TRIVANDRUM, REP. BY ITS
MANAGING DIRECTOR.
9. THE SUPERINTENDING ENGINEER,
PUBLIC HEALTH CIRCLE, KERALA WATER AUTHORITY,
TRIVANDRUM.

BY ADV. SMT C. AMBIKADEVI, STANDING COUNSEL, KWA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04/04/2007, THE COURT ON 13/04/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN, Ag. C.J. & M.N. KRISHNAN, J.

W.P. (C). No 11481 of 2007 - R

Dated: 13 th April 2007

JUDGMENT

Radhakrishnan, Ag. C.J.

This writ petition has been preferred by party in person to quash Exts. P4 and P5 orders dated 01.11.2006 and 13.12.2006 respectively appointing second and third respondents as arbitrators and also for a direction to appoint arbitrators from the panel prepared by the High Court. Petitioner has also stated that appointment of retired Judges of this court may not be resorted to as it is against the conduct rules of the Judges and that everybody who have been included in the panel should get a chance to become an arbitrator and also for other consequential reliefs.

2. Ext. P4 is a judicial order passed by this court in A.R. Nos 55 and 56 of 2005 on 01.11.2006 appointing the second respondent as the sole arbitrator to determine the disputes between the parties in that case. Ext. P4 order would show that second respondent was appointed on consent of parties. Ext. P5 is another order passed by

this court in A.R. Nos 53, 54 and 55 of 2006 on 13.12.2006 appointing third respondent as arbitrator to resolve the disputes between the parties therein. Parties in Exts. P4 and P5 have no grievance against the appointment of second and third respondents as arbitrators to resolve the disputes between them. We fail to see how the petitioner can have any grievance against the appointment of second and third respondents as arbitrators to resolve the disputes between persons who are parties to Exts. P4 and P5.

3. Petitioner has been included in the panel of arbitrators prepared by the High Court under the Arbitration and Conciliation Act, 1996, a copy of which has been produced by the petitioner as Annexure to Ext. P7. Petitioner is shown as serial number 3. Complaint of the petitioner is that this court has not so far appointed him as arbitrator in any case. Petitioner has also a contention that appointing retired judges of this court as arbitrators would not advance justice and is not valid. Petitioner has filed Ext.P9 representation to the Acting Chief Justice stating that he is not requesting for his appointment as arbitrator, but according to him, selection of respondents 2 and 3 as arbitrators is illegal and is liable to be set aside. Exts. P4 and P5, it may be noted, are judicial

orders which cannot be challenged by the petitioners in a petition before the Acting Chief Justice or before this court under Article 226 of the Constitution of India. Hence the prayer for setting aside the appointment orders appointing respondents 2 and 3 as arbitrators cannot be sustained. Further petitioner has made a request that arbitrators be appointed from the panel prepared by this court based on their qualification, experience etc., a matter on which persons who are included in the panel have no say and it is entirely for the parties to the dispute and the judge who decides the reference. Needless to say, orders passed by this court on arbitration requests are judicial orders as declared by the apex court in SBP & Co. v. Patel Engineering Ltd and another (2005) 8 S.C.C. 618). We therefore find no reason to entertain this writ petition, which in our view, is ill-advised and is an abuse of the process of this court. The writ petition stands dismissed.

Sd/-

K.S. RADHAKRISHNAN,
Ag. Chief Justice

Sd/-

M.N. KRISHNAN
Judge

13/04/2007en

APPENDIX

Petitioner's exhibits:

Ext.P1 - True copy of the parchment commission dated 15.6.1966 issued to the petitioner by His Excellency, the President of India Dr S. Radhakrishnan on 10.04.1967

Ext.P2 - True copy of notification No D1.12759/97 dated 24.10.1997 issued by the respondent under the powers conferred by the Arbitration and Conciliation Act, 1996

Ext.P3 - The Panel of Arbitrators prepared by the first respondent for the year 2006 under the Act 1996 as on 23.3.2006.

Ext.P4 - True copy of the order dated 1.11.2006 by the first respondent in AR 55/2005 and AR 56/2005

Ext.P5 - True copy of order dated 13.12.2006 issued by the first respondent in AR 53/06 AR 54/06 and AR 55/06

Ext.P6 - True copy of the notification No D1(A) 27371/2002 dated 27.1.2007 for including the serial No 13 in the list.

Ext.P7 - True copy of the application No 17165/NDJ/PERS/3 dated 31.1.2007 addressed to the first respondent by the petitioner.

Ext.P8 - True copy of the acknowledgment of Ext P7 on 1.2.07 by the first respondent.

Ext.P9 - True copy of the further representation No 17165/NDJ/PERS/5 dated 15.3.07 addressed to the first respondent (Acting Chief Justice) for personal attention by the petitioner with copy of the envelope.

Ext.P10 - True copy of the acknowledgment of the Ext P9 letter issued by the first respondent on 15.3.07.

[true copy]